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Understandings of the Rule of Law in various Legal Orders of the World
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Rule of Law in Islamic modeled States

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I. Introduction

The debate of rule of law concept(s) cannot be concerned with only the views put forward by the *maîtres à penser* of "Western" countries – at least for those rejecting a parochial "Eurocentric" bias. It is obvious that the attitude of "Western" intellectuals towards the "rule of law" is different from the attitude raised by "non-Western" (trained) partners, such as those who belong to the "Islamic World. While "Westerners" belong to a historically unified tradition – even while it is open to different interpretations and outcomes –, "non-Westerners" look at the tradition "from outside" and compare it to their own (legal-) cultural forms.[1] Due to fact the term's origin is "Western", it requires a clarification as to the context in Islamic modeled states. That said, this article attempts to give an insight into the discourse of the rule of law in Islamic modeled states in general. The evolution of legal theory within current Muslim context cannot easily be equated with the general "Western" understanding of 'rule of law' due to inherently different historical and traditional Islamic influences, which is therefore why I use the term "Islamic modeled". On the basis of the wide and especially complex field, it is, accordingly, neither possible to discuss all notions nor the entire spectrum of national views in the "Islamic World".[2]

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[1] Cf. Pietro Costa / Danilo Zolo, *Preface*, in Pietro Costa / Danilo Zolo (eds.), The Rule of Law: History, Theory and Criticism, Springer: Dordrecht 2007, pp. ix-xiii.

[2] For respective case studies see e. g. Hatem Elliesie 2010: *Rule of Law in Afghanistan*, Rule of Law Workin Paper series No. 4; *Rule of Law in Egypt*, Rule of Law Working Paper series No. 5; *Rule of Law in the Sudan*, Rule of Law Working Paper series No. 6; Ramin

II. Sharī'a and State Law

Like other believers, Muslims have always sought to experience their faith in terms of individual and collective conformity with its normative system, commonly known as *sharī'a*, which is supposed to regulate Muslim daily life.[3] Accordingly, but generally speaking, Muslims in the so-called "Islamic World" believe *sharī'a* to be directly derived from the Qur'ān and Sunna through a specific methodology (*usūl al-fiqh*) that was developed by Muslim scholars in the eighth and ninth centuries.[4] Paradoxically, that belief also underlies the ambiguous status of *sharī'a* in relation to state law.[5] On the one hand, the common perception of *sharī'a* makes it "more than state law" because of its comprehensive scope, from doctrinal matters of belief and religious rituals, ethical and social norms of behavior, to seemingly legal principles and rules. This comprehensive scope itself, on the other hand, means that *sharī'a* is also "less than law", in the sense that its enforcement as law requires the intervention of legislative, judicial and administrative organs of the state. Yet, this sort of state action – a necessary product of mundane, human politics – is therefore not divine command as such.[6]

Moschtaghi 2010: *Rule of Law in Iran*, Rule of Law Working Paper series Nr. 11; all at http://wikis.fu-berlin.de/display/SBprojectrol/Rule+of+Law+Working+Paper+Series.

[3]   Abdullahi Ahmed An-Na'im, *Islam and Human Rights: Introductory Remarks and Reflections*, in: Hatem Elliesie (ed.), Islam und Menschenrechte / Islam and Human Rights / al-Islām wa-Huqūq al-Insān, Peter Lang Publishing Group: Frankfurt am Main / Berlin / New York / Oxford et al. 2010, pp. 41 et seqq. (on p. 44).

[4]   Abdullahi Ahmed An-Na'im, Islam and Human Rights: Introductory Remarks and Reflections, in Hatem Elliesie (ed.), *Islam und Menschenrechte / Islam and Human Rights / al-Islām wa-Huqūq al-Insān*, Peter Lang Publishing Group: Frankfurt a.M. / Berlin / New York / Oxford et al. 2010, p. 41 (on p. 44); Mathias Rohe, *Das islamische Recht: Geschichte und Gegenwart*, Beck: München 2009, p. 45; Joseph Schacht, *An Introduction to Islamic Law*, Oxford University Press: Oxford 1982, p. 59; in detail Birgit Krawietz, *Hierachie der Rechtsquellen im tradierten sunnistischen Islam*, Duncker & Humblot: Berlin 2002. Zum schiitischen Hāshemi Mohammad, *Hoquq-e asāsi-ye Jomhūri-ye Eslami-ye Irān*, Volume I, Mizan: Teheran 1382 (2002); Harald Löschner, *Die dogmatischen Grundlagen des šī'itischen Rechts: Eine Untersuchung zur moderneren imāmitischen Rechtsquellenlehre*, Heymann: Köln 1971, p. 32.

[5]   Cf. already Josef Hans, *Dynamik und Dogma im Islam: Zeitgemäße Randglossen zur Rechts-, Staats- und Sozialordnung*, 2nd edition, Brill: Leiden 1960.

[6]   Abdullahi Ahmed an-Na'im, *Shari'a in the Secular State: A Paradox of Seperation and Conflation*, in Peri Bearman / Wolfhart Heinrichs / Bernard G. Weiss (eds.), *The Law Applied: Contextualizing the Islamic Shari'a*, I.B. Tauris: London / New York 2008, pp. 319 (323).

III. The Islamic modeled State and the question of Sovereignty

Considering, however, the notion of "divine sovereignty", which is popular among many Islamic thinkers and young intellectuals, the question how we should understand the proclamation *al-hākimiyya li-Allāh* arises – a term roughly understood as "sovereignty (rulership) belongs to God". Bernard Lewis, for example, maintains that

> "the Islamic state was in principle a theocracy, not in the Western sense of a state ruled by the Church and the clergy […] but *in the more literal sense of a polity ruled by God* […]".[7]

This explanation paves the way for viewing the Islamic polity as a 'despotic' state, for God is hardly the sort of ruler who could be held to account for His actions, or who would need to consult with any of His subjects. Yet, the Tunisian Islamic thinker Rāshid al-Ghannūshī offers a more plausible explanation of "divine sovereignty". Accordingly, he elucidates that

> "[t]hose who proclaim that sovereignty belongs to God do not mean to suggest that God rules over the affairs of the Muslim community directly, or through the clergy: For there is no clergy in Islam, and God cannot be perceived directly, nor does He dwell in a human being or an institution which can speak for Him. What the slogan 'sovereignty belongs to God' means is rule of law (*hukm al-qanun*), government by the people".[8]

Moreover, 'Azmī Bishāra, who claims that in times when social consciousness takes a religious form, calls for the application of *sharī'a* may express a democratic tendency, or at least an opposition to despotism, simply because *sharī'a*-rule implies restrictions on the exercise of political power over and above the mere will of rulers.[9]

[7]   Bernard Lewis, *Islam and Liberal Democracy*, in: Atlantic Monthly, 27 (1993), pp. 89-98; quoted by S.M. Lipset, *The social Requisites of Democracy revisited*, in: American Sociological Review, 59 (1994), p. 6 [NB: Italics added].

[8]   Rāshid al-Ghannūshī, *Muqārabāt fī al-'ilmāniyya wa-l-mujtama' al-madanī* [Conceptions of Secularity and Civil Society], London: al-Markaz al-Maghāribī li-l-buhūth wa-t-tarjama, 1999, p. 155.

[9]   Azmī Bishāra, *Madkhal li-mu'ālajāt ad-dīmuqrātiyya wa-'ānmāt at-tadayyun* [Democracy and Religious Forms], in: B. Ghalyūn / et al. (eds.), *Hawla al-khiyār ad-dīmuqrātī* [The Democratic Alternative], Ramallah: Muwātin, 1993, p. 83.

IV. The Islamic modeled State and Authority

That said, one is able to state in this specific context that the nature of religious authority is, or should be, inherently different from the nature of political authority and cannot be evaluated except within the free conscience of each believer. Whenever religious authority is claimed for state legislation or policy, it is really for the enforcement of the views or beliefs of the ruling elite. The ruling elites can only act from their own perspective, and are therefore subject to criticism and challenge from other perspectives. Since such views are always those of fallible human beings and never divine, they should not have higher religious authority than those of other human beings. Believers cannot express legitimate criticism if legislation and public policy are alleged to be sanctioned by divine command. In fact, ruling elites claim religious mandates precisely in order to insulate their actions against criticism and political change. Yet *sharī'a* cannot be enforced by the state, because coercion negates the religious notion of compliance. For compliance with any Islamic precept to have religious value, it must be completely voluntary, done with the required personal pious intention (*nīya*). Voluntary intent to comply cannot be ascribed to an act that is performed under the coercive authority of the state.[10] Hence, remarks by Rāshid al-Ghannūshī, 'Azmī Bishāra, and others[11] indicate that it may be possible to find elements of constitutionalism in Islam. These elements can be expressed by means of modern terms, such as "rule of law"[12] or (more or less) equivalents such as *siyādat / hukm al-qānūn* in the Sudan and Egypt or *hākemiyat-e qānun* in Iran[13]. Those terms, as a principle enshrined in constitutions,[14] provide that e.g. "the sovereignty of law [*siyādat al-qānūn*] is the root of the state's power".[15]

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[10]   Abdullahi Ahmed An-Na'im, *Shari'a and the Secular State in the Middle East and Europe*, Carl Heinrich Becker Lecture der Fritz Thyssen Stiftung 2009, Berlin, 19 May 2009 [in the printed version on pp. 105 et seqq. (on p. 112).

[11]   E.g. T. al-Bishrī, *al-Wad' al-qānūnī bayna ash-sharī'a al-islāmiyya wa-l-qānūn al-wad'ī* [The legal Situation with regard to Islamic Shari'a and Positive Law], Cairo: Dār al-Shurūq, 1996, p. 121.

[12]   Raja Bahlul, Is Constitutionalism Comparative with Islam?, in: Pietro Costa / Danilo Zolo (eds.), *The Rule of Law: History, Theory and Criticism*, Springer: Dordrecht 2007, p. 519.

[13]   Ramin Moschtaghi (supra note 2), p. 1.

[14]   Cf. Article 64 of the Egyptian Constitution.

[15]   Cf. for example Hatem Elliesie 2010: *Rule of Law in Egypt* (supra note 2), p. 3.

V. The Islamic modeled State and the Rule of Law

Accordingly, contemporary scholars of Islamic law have placed a strong emphasis on the notion that legal doctrine is in a state of constant flux and development. The premium placed on the historical development of doctrine has generated new ways of thinking about law and its place in Islamic societies:[16] The role of *sharī'a* in the administration of justice probably worked well under the imperial states of the pre-colonial era, which had minimal involvement in the daily governance and administration of justice among local communities. However, the situation has significantly changed with the introduction of the European model of the state and conceptions of law as a result of colonialism.[17] The legal order, in the modern sense, constructed in the late nineteenth century, augmented the authority of the central state even as it placed (sometimes feeble) limitations on specific individuals and office holders. Hence, the relationship of law to domination and authority could, generally, be considered more political than ideological in contemporary understanding. Legislation became the exclusive domain of the state.[18] The current legislature enacts a huge number of legislative texts, and its courts are swamped with civil and criminal disputes, meaning that the people are somehow convinced that courts effectively apply national enacted law. Quite likely, this shows the paradoxical use of the concept of the rule of law in those countries: its respect may be deemed to protect individuals against the state's arbitrariness, though it may be also used to build "a stronger, more effective, more centralized and more intrusive state".[19] This is exemplified by the relationship between law and morality. On one hand, to resort to moral (Islamic) principles allows individuals to challenge the state's authority; on the other hand, however, it also enables the judiciary to construct a legal and officially sanctioned interpretation of such principles. In other words, morality constrains law, though it is lawyers who make morality legal. By so doing, the allegedly heteronomous status of morality is turned into a positive and legal one. The rule of law is thus strengthened, given that people and the state must abide by legally and judicially defined rules. However,

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[16]   Nimrod Hurvitz, *Law and Historiopgraphy: Legal Typology of Lands and the Arab Conquests*, in Peri Bearman et al. (supra note 6), p. 360.

[17]   Abdullahi Ahmed an-Na'im, *Shari'a in the Secular State: A Paradox of Seperation and Conflation*; in: Peri Bearman et al. (supra note 6), pp. 319 (323).

[18]   Cf. Nathan J. Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf*, Cambridge University Press: Cambridge / New York / Melbourne 1997, p. 128.

[19]   Nathan J. Brown (supra note 18), p. 237.

this is a "rule of lawyers' law"; thus, it raises the issue as to the latter's power to exercise a legislative function. Hence, in the context of many Islamic modeled countries, where politically sensitive issues are monopolized by the executive by creating a dichotomy opposing not law to morality but rather ordinary law to exceptional law, the challenge is no longer simply that of the rule of morality constrained law. Rather, the problem is also about the rule of hierarchical law, whereby cases are treated differently according to their political nature. The rule of law is thus turned into the rule of the ruler.[20]

1. The Separation of Power Principle

Turning to the question of internal workings of government from a *sharī'a*'s point of view, the first thing to notice is that *sharī'a* (as it has been understood and practiced until very recently) does not explicitly offer a doctrine of the "separation of powers". This should come as no surprise, for the Western doctrine of the separation of powers itself has recent origins. Moreover, the Islamic traditional *sharī'a* did not conceive of distinct governmental powers to be separated from each other, in the first place.[21]

There is, of course, no reason why contemporary *sharī'a* thinkers cannot take up the challenge to elaborate a position with respect to the separation of different branches of government. One may refer to Abū l-Hasan 'Alī al-Māwardī's (972 – 1058 CE) political theory, which, in some ways, represents the "political sphere", as conceived by traditional *sharī'a*. In his *Tadwīn ad-dustūr al-islāmī* Abū l-A'lā al-Mawdūdī recognizes an existing but "unwritten" Islamic constitution, and in his *al-Qānūn al-islāmī wa-turuq tanfīdhihi* he explains various types of law (constitutional and other) which Islamic lawmakers need to design. Abū l-A'lā al-Mawdūdī paves the way for a discussion of the meaning and role of the parliament ("legislative assembly") in the Islamic regime, because he takes the decisive step of espousing popular government, where people can freely elect their representatives. Adapting an ancient term to modern usage, Abū l-A'lā al-Mawdūdī often refers to members of the parliament as "those who loose and bind" (*ahl al-hall wa-l-'aqd*). He raises the question of what position they have, whether they serve as

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[20] Baudouin Dupret, *The Rule of Morality Constrained Law: The Case of contemporary Egypt*, in Pietro Costa et al. (supra note 1), pp. 543 et seqq. (on p. 558).

[21] Raja Bahlul, *Is Constitutionalism Comparative with Islam?*, in: Pietro Costa et al. (supa note 1), pp. 515 et seqq (on p. 531).

mere consultants to the caliph, or whether the caliph is "bound" by their decision. His answer is that

> "we have no choice but to make the executive power subject to the majority decision of the legislative council".[22]

Seen as a general tendency in contemporary Islamic modeled states, especially in the Middle East, the subordination of all organs of the state to the executive authority is obvious, due to the fact that a series of new constitutions and basic laws were written, the extensive authority grants to the executive to rule by decrees (e.g. *qarārāt*, *marāsīm*, *farāmin-e taqnīnī*, *moqarrarāt*), the creation of a weak parliament, and the foundation of a series of mass political organizations to replace old, multiparty systems. Yet, regimes left the judicial structure alone. States of emergency and new constitutions granted regimes a fairly free hand in drafting legislation. Attempts by the courts to curb executive authority were often effectively forestalled.

In this context, Egypt is a striking example: One can detect an early move towards constitutional review when 'Abd ar-Razzāq as-Sanhūrī developed his brief tenure as an administrative judge to transform the *Majlis ad-Dawla* into a proto-constitutional court, anticipating developments in France which saw the equivalent *Conseil d'Etat* accepting to review administrative excesses in the light of higher *principes generaux du droit*. In its famous decision on 20 February 1948 the Egyptian Conseil d'Etat established that

> "there is nothing in Egyptian law which prevents Egyptian courts from addressing the constitutionality of laws whether in the issuing of decrees or legislation or whether from the point of view of form and substance".

After rejecting the argument by the government that such review would contradict the principle of the separation of powers, the Court concluded that

> "if one of the powers is using the principle of separation of powers as a pretext to undermine the constitution, the matters would end in limits chaos".[23]

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[22]   Abū l-A'lā Mawdūdī, *al-Qānūn al-islāmī wa-turuq tanfidhihi*, Dār al-Fikr: Beirut [ca. 1970], p. 38.

[23]   *Majmu'āt ahkām majlis ad-dawla*, Cairo, ii, p. 3150, quoted in Ahmad Hiba, Ta'līq 'ala ijtihād hawla wilāyat al-mahkama ad-dustūriyya al-'ulyā, *MAFQ*, Vol. 12, October 1992, pp. 239-262, at p. 254. Cf. also Chibli Mallat, A Comparative Note on the Judicial Protection of Basic Rights: Some Theoretical and Practical Issues, in: Eugene Cotran and Adel Omar Sharif (eds.), *The Role of the Judiciary in the Protection of Human Rights*, Kluwer: London et al. 1997, pp. 393 et seqq. (on p. 395).

Thus, it is fairly obvious that an agency is needed in order to review laws and decrees within contemporary Islamic modeled states. A way to conceptualize this function is in terms of a third branch of government, a judicial branch, charged with the task reviewing legislation.[24] Judicial review is a court's power to review, and possibly nullify, laws and governmental acts that violate the constitution and higher norms. It is a way to assure that governmental actors respect the constitution and do not use powers granted to them by the constitution to seize illegitimate power. The international model of constitutional review is offered by the difference in the work of the U.S. Supreme Court and the French *Conseil Constitutionnel*. This model is exemplified in the Islamic modeled States in Middle East in the operation of *al-Mahkama ad-Dustūriyya al-'Ulyā* (Supreme Constitutional Court of Egypt) and the *Shurā-ye Negahbān-e Qānun-e Asāsi* (Guardian Council of the Constitution) in Iran.[25]

2. Judicial Review

To begin with, one has to pinpoint that the constitutional clauses whereupon Islam is the religion of the state and/or *sharī'a* the principal source or a principal source of legislation[26] is a powerful one. Its power depends not in its repetition in several articles of the constitution but on the adherence of the legislature to it and its implementation by the judiciary. Still, the statement must be accompanied by the possibility of judicial review. As the judiciary applies *sharī'a* to national legislation, it must confront potential conflicts between the sovereignty of man and sovereignty of God. These conflicts are, of course, by no means new. Every day, Muslims make decisions based not only on their personal needs and desires, but also on the dictates of the Islamic *sharī'a* – on the dictates of God and the prophet Muhammad. In the application of

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[24]   Raja Bahlul, *Is Constitutionalism Comparative with Islam?*, in Pietro Costa et al. (supra note 1), pp. 515 et seqq (on p. 534).

[25]   Chibli Mallat, *A Comparative Note on the Judicial Protection of Basic Rights: Some Theoretical and Practical Issues*, in Eugene Cotran / Adel Omar Sharif (eds.), The Role of the Judiciary in the Protection of Human Rights, Kluwer: London et al. 1997, pp. 393 et seqq. (p. 396).

[26]   In more detail see Baber Johansen, *The Relationship between the Constitution, the Sharî'a and the Fiqh: The Jurisprudence of Egypt's Constitutional Court*, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 64 (2004), pp. 881 (p. 883); Naseef Naeem, *Einflüsse der Religionsklausel auf die Verfassunggebung in islamisch geprägten Ländern*, in: Birgit Krawietz / Helmut Reifeld (eds.), Islam und Rechtsstaat zwischen Scharia und Säkularisierung, Konrad Adenauer Stiftung: Sankt Augustin / Bonn 2008, pp. 77 et seqq. (on p. 79).

sharīʿa and the exercise of judicial review in a state founded on *sharīʿa*, the government should (formally) ensure that the dictates of God triumph over the desires of man.[27] This leads to the question of whose interpretation of the *sharīʿa* is authorative in a state structure that purports to base itself on Islamic *sharīʿa.*

In Iran, as opposed to Egypt, this question was addressed, though not always in ways that satisfied constitutionalists in the "Western" sense: Khomeini's answer to the question was based on the personal authority of the leader;[28] that solution might have been adequate for many Iranians, but it is considered to be hardly "constitutional". Post Khomeini Iran has moved away from that solution but yet to establish a clear alternative. The ambitious attempt to erect a legal and political system wholly on the basis of *sharīʿa* has fallen short without any clear principle articulated to replace it. In Egypt, on the other hand, the absence of attention to clear procedural details on the interpretation and role the Islamic *sharīʿa* has left the executive and legislative authorities wide latitude where *sharīʿa* provides unclear or multiple answers.[29] However, legislation incompatible with an unalterable principle of Islamic *sharīʿa* is, by way of methodology, invalid.[30]

[27]   See Irene Schneider, *Islamisches Recht zwischen göttlicher Satzung und temporaler Ordnung? Überlegungen zum Grenzbereich zwischen Recht und Religion*, in: Christine Langenfeld / Irene Schneider (eds.), Recht und Religion in Europa: Zeitgenössische Konflikte und historische Perspektiven, Universitätsverlag Göttingen 2008, p. 138 (p. 154); Adel Omar Sherif, *Constitutions of Arab Countries and the Position of the Sharīʿa*, in: Nadjma Yassari (ed.), The Sharīʿa in the Constitutions of Afghanistan, Iran and Egypt – Implications for Private Law, Moor Siebeck: Tübingen 2005, p. 155 et seqq. (p. 159).

[28]   Cf. Ramin Moschtaghi (supra note 2), p. 2; Hootan Shambayati, *Courts in Semi-Democratic/Authoritarian Regimes: The Judicialization of Turkish (and Iranian) Politics*, in: Tom Ginsburg / Tamir Moustafa (eds.), Rule by Law: The Politics of Courts in Authoritarian Regimes, Cambridge University Press: Cambridge et al. 2008, pp. 283 et seqq. (p. 299); Moojan Momen, *An Introduction to Shi'i Islam: The History and Doctrines of Twelver Shi'ism*, Yale University Press: New Haven / London 1985, p. 196; Silvia Tellenbach, *Untersuchungen zur Verfassung der islamischen Republik Iran vom 15. November 1979*, Schwarz: Berlin 1985, p. 159 et seqq.

[29]   Cf. Hatem Elliesie, *Review Article re Holger Scheel: Religionsfreiheit im Blickwinkel des Völkerrechts, des islamischen und ägyptischen Rechts*, Duncker & Humblot, Berlin 2007, in Recht in Africa − Law in Africa – Droit en Afrique, Volume 12/ No. 1, Cologne 2009, pp. 149-154 (on p. 154).

[30]   Nathan J. Brown, *Islamic Constitutionalism in Theory and Practice*, in: Eugene Cotran / Adel Omar Sherif (eds.), Democracy, the Rule of Law and Islam, Kluwer Law International: The Hague 1999, pp. 491 et seqq. (on p. 496 and p. 505); Clark B. Lombardi, *Egypt's Supreme Constitutional Court Managing Constitutional Conflict in an authoritarian, aspiratinonally 'Islamic' State*, in: Journal of Comparative Law (2008), volume 3, issue 2, pp. 234-253.

VI. Conclusion

In conclusion, the precise content of the normative system of *sharī'a* has been, and will continue to be, the product of human understanding[31] in its specific historical context.[32] Although *sharī'a* laws are of divine provenance, the actual construction of the law is human activity, and its results represent the law of God as humanly understood. The *ratio legis* (*hikma tashrī'iyya*) of a norm and its logical conclusion is a subjective understanding. Hence, at the time when one argues that norms in Qur'ān and Sunna are the understanding of justice at the time of the norm's origin, then, one is able to exchange the perception of justice in the modern sense. One has to consider that law in the Islamic context does not descend from heaven ready-made, it is the human understanding of the law – the human *fiqh* – that must be normative for society.[33] According to Assem Hefny and Mashood Baderin, Islamic set regulations and provisions pertaining to mundane matters are, in time and place, alterable. Attention should be paid to the doctrine of *al-'illa wa-l-ma'lūl* whereby causes differ in time and place for which reason outcomes vary as well.[34] Hence, a generalization of the rule of law concept in respective countries should be avoided. Rather, one has to see it from a different angle; namely, that of the specific national legal understanding against the background of the dichotomy between its particular traditional influence of (Islamic) legal theory and contemporary law in action, i.e. legal reality.

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[31]   Cf. Muhammad b. Jarīr at-Tabarī, *Jāmi' al-bayān 'an ta'wīl āyi al-Qur'ān* (penned by Mahmūd Muhammad Shākir), Vol. 6, Dār al-Ma'ārif: Cairo 1971, p. 48 et seq. and p. 66.

[32]   Abdullahi Ahmed An-Na'im, *Islam and Human Rights: Introductory Remarks and Reflections*, in Hatem Elliesie (supra note 3), p. 41 (p. 44).

[33]   Bernard Weiss, *The Spirit of Islamic Law*, University of Georgia Press: Athens 1998, p. 116; Abdullahi Ahmed An-Na'im (supra note 32), p. 45.

[34]   Assem Hefny, *Hermeneutik, Koraninterpretation und Menschenrechte*, in Hatem Elliesie (supa note 3), pp. 73 et seqq. (p. 81 et seq.); Mashood Baderin, *Islam and Human Rights in the Constitutions of African States: Agenda for Good Governance*, in Hatem Elliesie (supra note 3), pp. 123 et seqq. (on p. 141).